

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDDIE MOORE,

Plaintiff,

Case No. 1:07-cv-756

v.

Honorable Gordon J. Quist

MICHIGAN DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

ORDER FOR PARTIAL SERVICE

In accordance with the Opinion filed this date:

IT IS ORDERED that Plaintiff's action against Defendants MDOC, Berghuis and CMS is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and 42 U.S.C. § 1997e(c). Plaintiff's Fourteenth Amendment due process and Eighth Amendment claims also are DISMISSED WITH PREJUDICE against all of the named Defendants pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and 42 U.S.C. § 1997e(c).

IT IS FURTHER ORDERED that the Clerk shall arrange for service of summons and complaint, along with a copy of this order, upon Defendants Wells, Hillman and Beyers. Defendants Wells, Hillman and Beyers need only address Plaintiff's surviving retaliation claim.

IT IS FURTHER ORDERED that Defendants shall reply to the complaint after service in accordance with the following:

- (a) if a Defendant contends that the Plaintiff has failed to exhaust his administrative remedies as to one or more claims contained in the complaint, the alleged failure

must be raised in a motion for summary judgment filed within thirty days after service of the complaint. *See* 42 U.S.C. § 1997e(g)(2). The failure to raise exhaustion as directed by this order may result in a waiver of the defense. **Any motion asserting the exhaustion defense must be limited to that issue only.** A Defendant asserting the exhaustion defense will have the opportunity to raise any other defense in a future motion or pleading; **or**

- (b) if a Defendant chooses not to raise the exhaustion defense, that Defendant shall reply to the complaint by way of answer, motion to dismiss, or motion for summary judgment within the time allowed by law. *See* 42 U.S.C. § 1997e(g)(1).

Dated: October 25, 2007

/s/ Gordon J. Quist
Gordon J. Quist
United States District Judge